## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (FORT WORTH DIVISION)

NEXTGEAR CAPITAL, INC. AND	§	Case No. 4:20-cv-00959-BJ
AUTOMOTIVE FINANCE	§	
CORPORATION,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	
	§	
DRUIEN, INC. D/B/A LAWTON	§	
<b>AUTO AUCTION A/K/A LAWTON</b>	§	
CACHE AUTO AUCTION, LISA	§	
DRUIEN, MICHAEL VERNON	§	
GARRISON D/B/A ROCK HILL	§	
USED CARS, AND EMMETT	§	
DRUIEN,	§	
	§	
Defendants.	§	
	§	

## STATEMENT IN SUPPORT OF DEFENDANT'S MOTION TO VACATE ORDER OF DEFAULT

- Joseph Vacek of Bailey & Galyen appears as attorney of record in the above styled matter, Mr. Vacek left the firm during the month of January 2021.
- Mr. Vacek was not readily replaced, and several months passed before Richard Fiory
   Tallini, was recruited to replace Vacek, and manage his caseload. Mr. Tallini was hired
   on February 15, 2021.
- 3. During the first week of Mr. Tallini's employment, there was a tremendous ice storm that severely impacted the state of Texas and hindered Mr. Tallini's first week with Bailey & Galyen.

- 4. While Mr. Tallini was getting up to speed and entering appearances in multiple matters, he had conversations with Christopher Arisco of Padfield & Stout, Attorneys for Plaintiffs. In those conversations, several upcoming events were discussed. In particular, a settlement conference and mediation.
- 5. Shortly thereafter, and on 03-31-2021, Mr. Emmitt Druien was served with an amended complaint naming him as an additional defendant. At around the same time, Mr. Tallini's only supporting paralegal surprisingly announced her retirement leaving Mr. Tallini with limited resources at the critical period.
- 6. Mr. Tallini was also discussing conflict concerns with Defendants Lawton Auto Auction, owned by Lisa and Emmitt Druien, and Co-Defendant Lisa Druien.
- 7. As the Settlement Conference and Mediation were nearing, Lisa and Emmitt Druien ("Druiens") became hopeful that they could settle the matter. It wasn't until after the aforementioned events that it became clear to the Druiens that they would have to proceed with the instant litigation.
- 8. Going forward, Mr. Tallini will file a Designation of Counsel to Lawton Auto Auction and Lisa Druien. Mr. Tallini will also appear in defense of Defendant Emmett Druien.
- 9. Mr. Druien has bona fide defenses to Plaintiffs' Second Amended Complaint, a copy of his Answer is attached to this application.
- 10. Defendant, Emmett Druien, requests Default be set-aside, and Defendant's Answer to Plaintiffs' Second Amended Complaint be allowed.

Respectfully submitted,

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/s/ Richard Fiory Tallini
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Attorneys for Defendants Druien, Inc. d/b/a Lawton Auto Auction a/k/a Lawton Cache Auto Auction, Lisa Druien, and Emmett Druien

## **CERTIFICATE OF SERVICE**

This is to certify that on May 6, 2021, a true and correct copy of the foregoing MOTION TO VACATE ORDER OF DEFAULT has been forwarded to defendant M. Garrison, pro se, at 549 I-30 E., Sulphur Springs, Texas 75482, via certified mail, return receipt requested, and NextGear and AFC by and through their counsel of record, Alan B. Padfield and Christopher V. Arisco of Padfield & Stout, L.L.P., 420 Throckmorton Street, Suite 1210, Fort Worth, TX 76102, via ECF and by email to abp@padfieldstout.com carisco@padfieldstout.com.

/s/ Richard Fiory Tallini Richard Fiory Tallini

## **CERTIFICATE OF CONFERENCE**

This is to certify that on April 30, 2021, I spoke with Plaintiffs' counsel, Christopher V. Arisco to discuss the relief requested in this motion. Pursuant to the phone conversation with Mr. Arisco, he advised Plaintiffs were opposed to the relief sought. Accordingly, this motion is presented to the court for determination.

/s/ Richard Fiory Tallini Richard Fiory Tallini